

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Eric Judice	:	
-vs-	:	
Commonwealth Edison Company	:	
	:	14-0121
Complaint as to being denied net metering	:	
in Elgin, Illinois	:	

RESPONDENT’S MOTION TO DISMISS

Now Comes Respondent, Commonwealth Edison Company (“Respondent” or “ComEd”), by and through its attorneys, Mark L. Goldstein and Rebecca A. Graham, and for its Motion to Dismiss the Formal Complaint (“Complaint”) filed by the Complainant, Eric Judice (“Complainant”), states as follows:

Introduction

Complainant filed his Complaint (attached hereto as Exhibit A) against Respondent in the above-captioned matter on February 14, 2014. Complainant alleges that ComEd wrongfully denied him net electricity metering for a generator fueled by “waste food processing.” *See* Exhibit A, Complaint. Although ComEd strongly supports clean energy and net electricity metering, Complainant quite simply does not utilize a fuel source that is eligible for net electricity metering under Illinois law. Consequently, Respondent’s denial of Complainant’s request was required by Illinois law governing net electricity metering, and the Complaint must therefore be dismissed with prejudice.

Argument

Complainant misstates and misinterprets the law relative to net electricity metering in Illinois. Under the Illinois Public Utilities Act (the “Act”), net electricity is available for a “retail customer that owns or operates a solar, wind, or other eligible renewable electrical generating

facility.” 220 ILCS 5/16-107.5(b)(i). An “eligible renewable electrical generating facility” under the Act includes:

a generator powered by solar electric energy, wind, dedicated crops grown for electricity generation, agricultural residues, untreated and unadulterated wood waste, landscape trimmings, livestock manure, anaerobic digestion of livestock or food processing waste, fuel cells or microturbines powered by renewable fuels, or hydroelectric energy.

220 ILCS 5/16-107.5(b)(iii). Pursuant to the Act, ComEd’s Tariff Rider POGNM (relevant section attached hereto as Exhibit B) provides net metering to customers with electric generating facilities that are powered by the same sources listed in Section 16-107.5(b)(iii) of the Act. *See* Exhibit B “Prerequisites of Service.”

In this case, Complainant’s generator is fueled by “waste food processing.” This is not an eligible fuel source and does not entitle him to net electricity metering under the Act or Rider POGNM. It only becomes an eligible fuel source if it goes through the process of anaerobic digestion,¹ i.e., “anaerobic digestion of . . . food processing waste.” 220 ILCS 5/16-107.5(b)(iii). Interestingly, Complainant seemingly concedes this fact in his net metering application (relevant section attached hereto as Exhibit C) where he crosses out an eligible fuel source (“Methane from Anaerobic Digestion of Food Processing Waste”) and hand-writes “Biofuel of Food Processing Waste.” However, the law is clear – Complainant is not entitled to net electricity metering unless he utilizes a generator powered by one of the eligible sources in the Act, including **anaerobic digestion of food processing waste**. And neither the Act nor Rider POGNM allow net metering when the fuel source is food processing waste without the process of anaerobic digestion.

¹ “Anaerobic digestion is a process where microorganisms break down organic materials, such as food scraps, manure, and sewage sludge, in the absence of oxygen. Recycling food waste through anaerobic digestion produces biogas and soil amendment, two valuable products. Biogas, made primarily of methane and carbon dioxide, can be used as a source of energy similar to natural gas.” *See* <http://www.epa.gov/foodrecovery/fd-anaerobic.htm>.

Therefore, since the Complainant does not have an “eligible renewable electrical generating facility” under the Act or Rider POGNM, the Complaint must be dismissed.

For all of the above reasons, the Respondent, Commonwealth Edison Company respectfully requests that the Formal Complaint filed by Eric Judice against Commonwealth Edison Company on February 14, 2014 be dismissed with prejudice.

Respectfully submitted,
Commonwealth Edison Company

By: /s/ Rebecca A. Graham

CERTIFICATE OF SERVICE

I, Rebecca A. Graham, an attorney, certify that a copy of the foregoing RESPONDENT'S MOTION TO DISMISS along with Exhibits A, B, and C was served on the following parties by U.S. Mail and/or electronic transmission on March 18, 2014.

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/s/ Rebecca A. Graham

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